

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

State Farm Fire & Casualty Company,)	CASE NO.: 08-av-99999
)	
Plaintiff,)	
)	
v.)	COMPLAINT
)	(Declaratory Judgment)
Matthew Kelly and David Tyler)	(Jury Trial Demanded)
)	
Defendants.)	
_____)	

The Plaintiff, State Farm Fire & Casualty Company, would state as follows:

1. That the Plaintiff is a corporation organized and existing pursuant to the laws of the State of Illinois with its principal place of business in the State of Illinois.
2. That the Defendants are citizens and residents of the State of South Carolina, Charleston County.
3. This declaratory judgment action arises out of an incident which happened in Charleston County, South Carolina and venue is proper in this district and division. That the amount in controversy including potential indemnity payments and defense attorneys' fees exceeds the sum of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.
4. This is an action for declaratory relief to construe the rights and obligations of the parties with respect to an incident which happened on or about June 30, 2007.
5. That it has been alleged by David Tyler that on or about June 30, 2007 at Poe's Tavern on Sullivan's Island, Matthew Kelly grabbed the shirt of David Tyler and struck David Tyler's head making violent contact and knocking Mr. Tyler to the floor. Mr. Tyler further alleges that Mr. Kelly was then on top him and began violently

continuing his battery, thereby causing Mr. Tyler to suffer personal injuries.

6. That on June 30, 2007, State Farm Fire & Casualty Company had in force and effect a policy of homeowner's insurance issued to Matthew and Dana Kelly insuring their home and personal property against certain kinds of losses including fire and windstorm.
7. That the policy of homeowner's insurance also contained a section, Section II - Liability Coverages, which are subject to the terms, definitions, as more fully set forth in the policy of insurance.
8. That on page 15 the policy provides:

COVERAGE L - PERSONAL LIABILITY

If a claim is made or a suit is brought against an **insured** for damages because of **bodily injury** or **property damage** to which this coverage applies, caused by an **occurrence**, we will:

1. pay up to our limit of liability for the damages for which the **insured** is legally liable; . . .
9. The occurrence defined term is set forth on page 2 of the policy as follows:
 7. "**occurrence**", when used in Section II of this policy, means an accident, including exposure to conditions, which results in:
 - a. **bodily injury**; or
 - b. **property damage**;during the policy period. Repeated or continuous exposure to the same general conditions is considered to be one **occurrence**.
 10. The policy contains certain potentially applicable exclusions including the exclusion

set forth on page 16 as follows:

1. Coverage L and Coverage M do not apply to:
 - a. **bodily injury or property damage:**
 - (1) which is either expected or intended by the **insured**; or
 - (2) which is the result of willful and malicious acts of the **insured**; . . .
11. The Plaintiff requests the court inquire into the facts and circumstances surrounding this incident and, declare the rights and responsibilities of the parties by way of declaratory judgment.
12. That the Plaintiff requests the court enter a judgment that assault and battery is not covered by the terms of the policy and that the injuries in this case are not as a result of an occurrence, and are otherwise excluded by the terms of the homeowner's policy.

WHEREFORE, Plaintiff requests that the court inquire into the facts and circumstances surrounding this matter and declare the rights of the parties and award such other and further relief as the court deems just and proper.

s/Timothy A. Domin
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